HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: - Hon'ble Shri S.R. NAYAK, CJ

WRIT PETITION NO. 5741 OF 2005

PETITIONER Jawarlal Sharma, S/o Gokul Prasad Sharma, Retired Superintendent of Municipal Corporation, R/o Lili Chowk, Near Bihari Mandir, Raipur (C.G.).

Versus

RESPONDENTS

1. Shyam Lal Yadu, S/o Late Itwari Yadu, Assistant Superintendent, Raipur Municipal Corporation, R/o Tikrapara, Raipur (C.G.).
2. Municipal Corporation, Raipur, Through Commissioner, Municipal Corporation, Raipur (C.G.).
3. State of Chhattisgarh, Through Collector, Raipur (C.G.).

Present:

Mr. Ratan Pusty, learned counsel for the petitioner.

Mr. Parag Kotecha, learned Panel Lawyer for the State.

O R D E R

(Passed on 29th November 2005)

The application filed by the petitioner under Order XIII Rule 10 of the Code of Civil Procedure has been rejected by learned trial Judge. It was contended that the trial Judge ought to have given an opportunity to file an affidavit required to be appended to the application in terms of sub rule (2) of Rule 10 of Order XIII. There is nothing to show that such a request was made before learned trial Judge, before the impugned order was passed.

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2. A careful perusal of the provisions of sub rule (2) of Rule 10 of Order XIII would disclose that the requirement of filing of affidavit is mandatory. No exception can be taken to the order of learned trial Judge. The writ petition is, therefore, dismissed, however with no order as to costs.

Sd/-
Chief Justice

Subbu